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4 Aug 2004

Re: 10/031776 - request reinstatement of the appeal

Dear Sir/madam,

This in response to the action sent 07/21/2004, a non-final action after the prosecution was reopened following an appeal.

I request reinstatement of the appeal.

I attach three copies of a supplemental appeal brief, in which I respond to the new grounds for rejection in the action.

Thanks,

Yehouda Harpaz



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6 Aug 2004

Re: Application No. 10/031,776 - supplementary appeal brief

1) *Party of interest:* Yehouda Harpaz (sole inventor).

2) *Related appeals and interferences:* There are no related appeals or interferences.

3) *Status of claims:* Claim 1 - Rejected.
Claims 2-7 - cancelled.

The appeal is against the rejection of Claim 1.

4) *Status of Amendments:* There are no amendments subsequent to final rejection.

5) *Summary of the invention:* An electronic board which is played by touching points, with a novel behaviour. The behaviour is that, except playing in turns, the sole rule is that a point is a legal move if its 'visibility' for the player is above or equal to some fixed number. The 'visibility' of a point is determined by checking in turn each of a predefined set of imaginary straight lines emanating from the point. If the line does not pass through any illuminated point, it is assigned a value of 0. Otherwise the line is assigned a value of 1 if the closest illuminated point that it passes through is illuminated in the colour of the player, or -1 if it is in the opponent's colour. The sum of the values of the lines is the 'visibility' of the point for the player. The game ends when neither of the players has a legal move, and the player with more points of his/her colour wins.

The concept of 'visibility' and its implication is discussed in the description starting at the bottom of p. 3 of the description and continues through p. 4, and is illustrated in drawings 4 and 5 (the drawings cannot be understood without the text).

6) *Issues:* The rejection of Claim 1 under the doctrine of double patenting is based on misunderstanding what Harpaz 6,568,683 claims, and on ignoring the behaviour that is described in the claims. The rejection of Claim 1 under USC 102 (e) is based on a mis-representation of what Golad 6,231,441 says as if it contains material that it doesn't, and also doesn't take into account the full contents of Claim 1. The rejection of Claim 1 under USC 103 is based on a large mis-representation of what Blumberg *et al* say.

7) *Grouping of Claims:* Only one claim is appealed.

8) *Argument:*

(a) Double Patenting

(a.1) The rejection for double patenting with respect to Harpaz 6,568,683 was mentioned in the final rejection. The original brief, section (b) of the argument, explains why the current application is not double patenting with respect to Harpaz 6,568,683.

(a.2) The position with respect to the copending application 10/031890 is similar. the differences are:

- (i) In 10/031890, an unilluminated point is always a legal move, while the point of the current application is that an unilluminated point may or may not be a legal move (i.e. may or may not be switched on).
- (ii) In 10/031890, when a player touches a point, a pattern of points around the point is affected (change their illumination). In the current application, only the touched point changes.

(a.3) Thus a board that whenever an unilluminated point is touched changes the illumination of a pattern around this point is in the scope of 10/031890, but not in the scope of the current application. Conversely, a board that checks the legality of a move as described in the current application and if it is legal switched the point on is in the scope of the current application, but outside the scope of 10/031890. Thus each of 10/031890 and the current application has a scope that extends outside the scope of the other, therefore neither of them encompasses the other, and they are patentably distinct.

(a.4) The examiner reached the conclusion that the 10/031890 is patentably indistinct from the current application by ignoring the behaviour, but the behaviour is essential part of what is claimed in both applications, and therefore cannot be ignored.

(a.5) The same is true about application 10/031942. In difference from 10/031890, in 10/031942, points are always switched off. Thus a board that whenever an empty point is touched a pattern of points around is switched off is inside the scope of 10/031942, but outside the scope of the current application, and conversely, a board that check the legality and the switch one point on is in the scope of the current application but outside the scope of 10/031942. As above, the examiner reached his conclusion by ignoring the behaviour.

(b) Claim rejections - 35 USC 102

(b.1) The rejection because of anticipation by Golad 6,231,441 was mentioned in the final rejection. The original appeal brief, section (c) of the argument, explains why Golad 6,231,441 does not anticipate the current application.

(c) Claim Rejections - 35 USC 103

(c.1) On p.8, line 3, the examiner writes:

“Blumberg does expressly disclose the following:

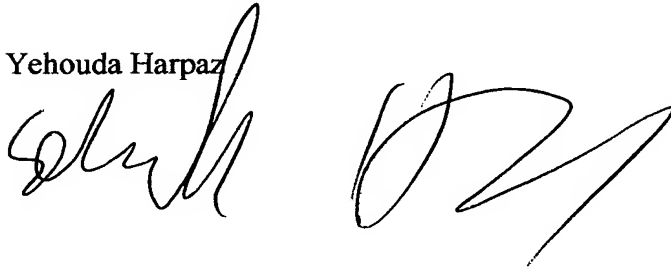
When a player touches a point, the games manager checks if it is a legal move, and if it is“

(indented paragraph continues for around half a page)

(c.2) However, the indented paragraph that is claimed to be “expressly disclosed” by Blumberg is not taken from Blumberg at all. In fact it is simply the second half of Claim 1 of the current application. There is nothing in Blumberg *et al* that can be claimed to say what is said in this paragraph, by any stretch of imagination. Thus the examiner makes the current application obvious with respect to Blumberg *et al* by attributing to Blumberg *et al* the most innovative part of claim 1 of the current application.

(c.3) What makes the behaviour in Claim 1 novel and inventive in respect to the state of the art was explained in the argument of the original appeal brief, paragraphs (c.5)- (c.9).
Blumberg *et al* in combination with Othello still contains only point (4) of the five points which were listed in paragraph (c.5) in the argument in the original brief, and it is therefore very non-obvious to move from a combination of Blumberg *et al* with Othello to the current invention. As in previous cases, the examiner completely ignores the behaviour (except attributing to Blumberg *et al* text from my Claim 1 as described in the previous two paragraphs).

Yehouda Harpaz

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9. Appendix - Claims

1 (original) An electronic board comprising:

a grid of *grid points* on a flat surface, where each *grid point* is a visible element which is capable of detecting when it is pressed, and can be illuminated in two different colours, allocated to respective players, by an illumination source inside or below the surface; and a character display ; and

a *game manager* made of

a CPU and memory, connected electronically to the grid points and illumination sources such that it has complete control on which grid point is illuminated and in what colour, and it is notified whenever any of the grid points is pressed, and a computer program which is executed by the CPU,

which manages a one or more games, of which at least one game is played according to these rules:

when a player touches a point, the games manager checks if it is a legal move, and if it is switches the point to the player's colour;

to evaluate if a point is a legal move, the games manager checks in turn each of a pre-defined set of imaginary straight lines emanating from the point, assigning a value of 0 to each of these lines that does not pass through an illuminated point, a value of 1 if the closest illuminated point that it passes through is illuminated with the colour of the player, and -1 if it is in the opponent's colour, and then compares the sum of the values of all the lines to a fixed number, and if the sum is larger or equal the point is a legal move for the player;

the games manager declares as winner the player that has more points of their colour in the end of the game.



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The concept of 'visibility' and its implication is discussed in the description starting at the bottom of p. 3 of the description and continues through p. 4, and is illustrated in drawings 4 and 5 (the drawings cannot be understood without the text).

6) *Issues*: The rejection of Claim 1 under the doctrine of double patenting is based on misunderstanding what Harpaz 6,568,683 claims, and on ignoring the behaviour that is described in the claims. The rejection of Claim 1 under USC 102 (e) is based on a mis-representation of what Golad 6,231,441 says as if it contains material that it doesn't, and also doesn't take into account the full contents of Claim 1. The rejection of Claim 1 under USC 103 is based on a large mis-representation of what Blumberg *et al* say.

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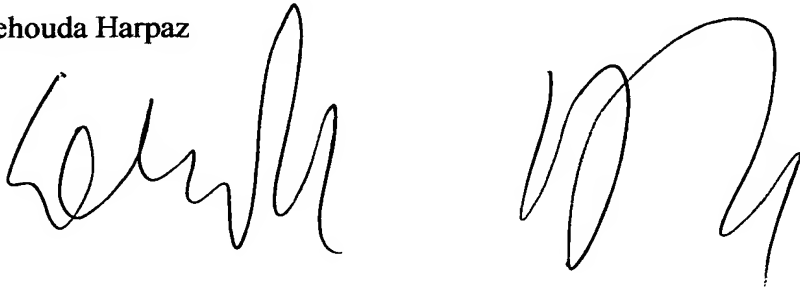
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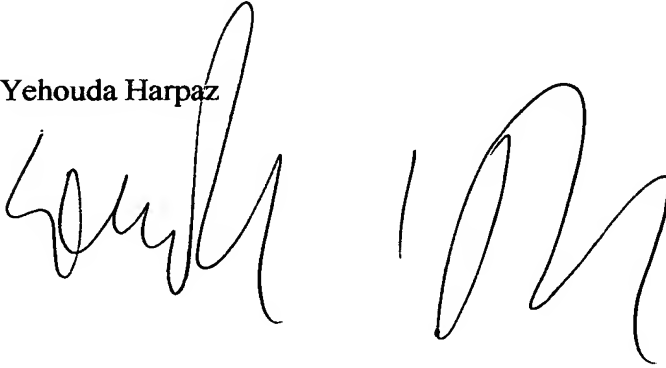
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